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MINORITY CHIEF OF STAFF

July 19, 2018

The Honorable Jefferson B. Sessions, III
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Sessions,

Since our investigation began in 2015, we found that far too many American taxpayers have had funds that were rightfully theirs seized unfairly by the government. Yet the U.S. Department of Justice (DOJ) continues to block the return of those funds despite recommendations from the Internal Revenue Service (IRS) to return them. We are deeply concerned that these taxpayers are not being treated fairly by DOJ—the very agency entrusted to administer justice. For this reason, we write today to demand again that DOJ exercise its discretion and immediately return these funds to their rightful owners.

As part of our oversight role, the Committee on Ways and Means seeks to ensure that the IRS has the necessary tools in place to collect the nation's taxes while still respecting the rights and freedoms of all Americans. In instances where an imbalance exists, the Committee often intervenes to ensure the protection of those injured, particularly when they cannot protect themselves. We appreciate the Acting Assistant Attorney General's June 20th testimony before the Committee and other briefings on this matter; however, DOJ's decision to deny most petitions for the return of funds unfairly seized by the IRS is one with which the Committee staunchly disagrees. Furthermore, we strongly believe that DOJ already has the discretion it needs to grant leniency in these cases, and yet it has chosen not to do so. Instead, DOJ time and time again has affirmed a position that the Committee believes is wholly indefensible. These taxpayers deserve better.

Over the past three years, the Committee has investigated the IRS's use of its civil asset forfeiture authority in cases where the agency believed monetary transactions were structured to avoid currency reporting requirements set forth under the Bank Secrecy Act.¹ The Committee first became aware of this issue when reports of small business owners whose bank accounts were seized based solely on structuring charges surfaced publicly. The majority of these individuals appeared to have committed no underlying crime (such as drug trafficking or money

¹ Bank Secrecy Act, Pub. L. No. 91-508, 84 Stat. 1114-24.

laundering), which was later confirmed by the Treasury Inspector General for Tax Administration (TIGTA).²

The Inspector General, who concluded that the IRS had grossly mishandled its enforcement of structuring laws, urged the IRS “in light of the fact that some property owners may be reluctant to again engage the Government ... [to] simply return the forfeited funds (and recommend to [DOJ] to do so in judicial cases).”³ During the course of the Committee’s involvement in this matter, we have seen the IRS slowly come to recognize these mistakes, ultimately taking appropriate steps well beyond what was legally required to provide relief to taxpayers whose funds were seized. We are encouraged by the actions that the IRS has taken to remedy this matter. These actions highlight the wide latitude that the Government has to address this issue. Under the Code of Federal Regulations, the IRS and DOJ have broad discretion to grant petitions for mitigation in circumstances where the violation is minimal,⁴ a standard that the IRS used to grant the majority of its petitions for mitigation.⁵ There is nothing that prevents DOJ from returning these funds in cases that are not a part of larger criminal schemes.

And yet, DOJ has elected not to do so. According to the IRS, it received 464 petitions for remission or mitigation. Of these petitions, 208 were for administrative forfeitures not referred to DOJ. The IRS reviewed and granted 84 percent of these petitions. The remaining 256 petitions were civil judicial forfeiture petitions, which were referred to DOJ for review. The IRS, as the seizing agency, sent a recommendation based on its own review with each DOJ referral. The IRS recommended that DOJ grant 76 percent of the petitions referred to it for a decision.⁶ However, DOJ elected to grant only 16 percent of those referred, declining to return approximately \$22.2 million in funds seized.⁷

The Members of this Committee are profoundly troubled by the significant discrepancy between the IRS’s recommended outcomes and DOJ’s final decisions. While some may argue legal technicalities justify the overwhelming denial of these petitions, we strongly urge DOJ to take a step back and reassess the facts and circumstances surrounding these cases. What was done was not fair, just, or right in most cases. The IRS’s actions led to the destruction of many lives and small businesses, some of which will never fully recover. As TIGTA noted, individuals were often not fully made aware of their rights during these seizures.⁸ They felt pressured, scared, and alone. And most importantly, many were simply trying to salvage what little they could through whatever means necessary.

Those circumstances led law abiding individuals to take actions or make statements that DOJ may feel gives it the right to deny those petitions. But we would remind DOJ, that this is the

² TIGTA, *Criminal Investigation Enforced Structuring Laws Primarily Against Legal Source Funds and Compromised the Rights of Some Individuals and Businesses*, Ref. No. 2017-30-025 (March 2017).

³ *Id.*

⁴ 28 C.F.R. 9.5(b)(2).

⁵ *Update on IRS and DOJ Efforts to Return Seized Funds to Taxpayers before the H. Comm. On Ways & Means, Subcom. On Oversight*, 115th Cong. (June 20, 2018).

⁶ *Id.*

⁷ *Id.*

⁸ TIGTA, *Criminal Investigation Enforced Structuring Laws Primarily Against Legal Source Funds and Compromised the Rights of Some Individuals and Businesses*, Ref. No. 2017-30-025 (March 2017).

very reason that a petition for mitigation process exists. By DOJ's own testimony, the mitigation process acts as a pardon request, permitting a plea for leniency. It provides DOJ with a safety valve that allows for the correction of actions taken by the Government, which in hindsight, we may realize were in error. This is one of those instances. Therefore, we write today to ask that you intervene. There are numerous criminals out there worthy of the DOJ's valuable time and effort but the individuals involved in these cases are not among them.

In the strongest terms, we again urge DOJ to utilize the broad discretion given to it when reviewing petitions for mitigation, prioritizing both the recommendations of the IRS and the findings of TIGTA, and return these funds. We also request a meeting with you as soon as possible to discuss this matter further with Members of the Committee. If you have any questions or concerns, please have your staff contact Rachel Kaldahl of the Ways and Means Committee at (202) 225-9263.

Sincerely,



Lynn Jenkins, CPA
Chairman
Committee on Ways and Means
Subcommittee on Oversight



Kevin Brady
Chairman
Committee on Ways and Means



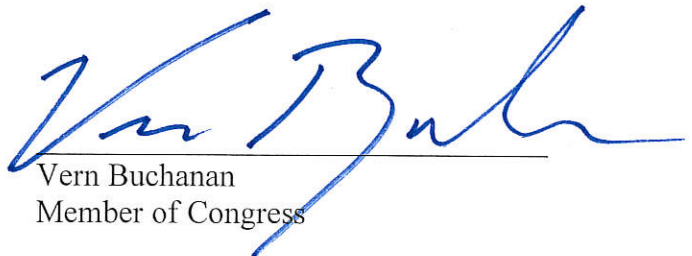
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Member of Congress



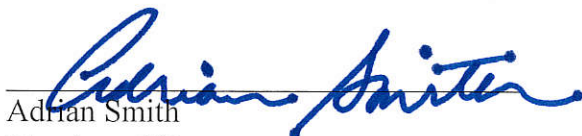
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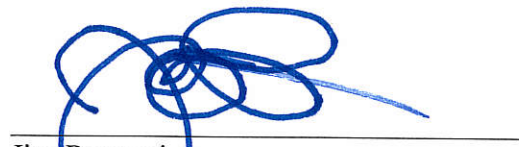
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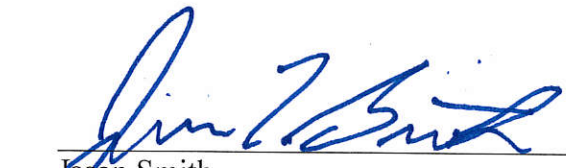
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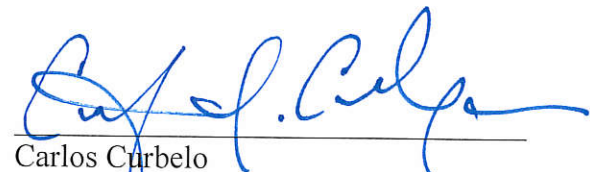
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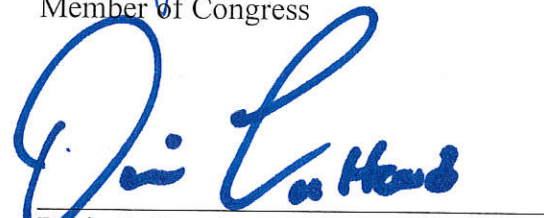
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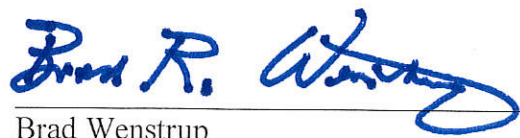
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